NOTICE OF COMMENT PERIOD

The Office of Probation Administration and the Probation Services Committee submitted to the Nebraska Supreme Court proposed rules regarding the implementation of Legislative Bill 605, as enacted during the 2015 legislative session. The new law placed additional duties on the Office of Probation Administration and mandated that new rules and regulations be promulgated. Proposed Neb. Ct. R. §§ 6-1901, 6-1902, and 6-1905 were conditionally approved by the Nebraska Supreme Court, prior to the comment period, due to the urgent need for a procedure to implement the custodial sanction provisions of the new law, which were effective as of August 30, 2015. Therefore, Neb. Ct. R. §§ 6-1901, 6-1902, and 6-1905 are effective on October 2, 2015.

The Nebraska Supreme Court invites interested persons to comment on all five of the proposed rules. Anyone desiring to comment on the proposed rules should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to jill.machacek@nebraska.gov, no later than November 1, 2015.

The proposed rules are available below, or a hard copy may be reviewed in the office of the Clerk of the Supreme Court and Court of Appeals upon request.

Chapter 6: Trial Courts
Article 19: Nebraska Court Rules for Probation Practices.

- § 6-1901. Custodial sanctions.
- § 6-1902. Custodial sanctions for Interstate Compact cases.
- § 6-1903. Early discharge from probation.
- § 6-1904. Post-release supervision.
- § 6-1905. Interstate Compact and JUSTICE.

§ 6-1901. Custodial sanctions.

The purpose of § 6-1901 is to provide the courts and probation with a procedure to ensure prompt court review of requests for the imposition of custodial sanctions.

(A) When a probationer, who is eligible for a custodial sanction pursuant to Neb. Rev. Stat. § 29-2266(8), admits to a violation of probation, consents to a custodial sanction, and waives the right to a hearing in writing, or when such probationer declines to acknowledge the violation of probation, the violation report and request for a custodial sanction shall be forwarded by the probation office to the court within 2 working days following the probation officer's detection of the violation, for judicial approval or denial.

(B) If approved, the court shall, within 5 judicial days of receiving the violation report and request for a custodial sanction, issue and distribute an order and mittimus with instructions as to the time, date, institutional location, and duration of the custodial sanction.

(C) If denied by the court, the court shall, within 5 judicial days, forward the denial, per local court and probation office procedure.

(D) If denied by the court, an alternative administrative sanction shall be pursued by the probation officer within 2 working days of the denial.

(E) If the probationer declines to acknowledge the violation, the probation officer shall immediately obtain a hearing date from the court. The court shall make every effort to conduct a hearing within 5 judicial days following receipt of the notification of violation report and request for a custodial sanction. If a hearing cannot be held within this timeframe, one shall be scheduled at the earliest opportunity. If the probationer does not have counsel and requests counsel but cannot afford one, the court shall appoint counsel to represent the probationer prior to the hearing. The probation officer shall also provide notice of the hearing to the appropriate prosecuting attorney.

(F) The court shall receive into evidence the affidavit in support of custodial sanction and any evidence provided by the probationer or counsel. An assigned probation officer shall appear. The hearing may be held, and attorneys, the probation officer, and the probationer may appear, by way of video or other technology when available.

§ 6-1902. Custodial sanctions for Interstate Compact cases.

The purpose of § 6-1902 is to ensure compliance with the Interstate Compact for Adult Offender Supervision rules and regulations, which carry the weight of federal law and require that probationers transferred between states be supervised as would probationers in the state in which they are supervised. See Neb. Rev. Stat. §§ 29-2639 and 29-2640. Probationers under supervision in Nebraska, but on probation from other states, are also subject to the application of custodial sanctions while being supervised in Nebraska. The following is intended to ensure prompt court review of requests for the imposition of custodial sanctions.

(A) The presiding district court judge, or designee, in the jurisdiction in which the probationer is under supervision shall serve as the authorizing court for purposes of administrative and custodial sanctions in accordance with § 6-1901.

§ 6-1903. Early discharge from probation.

The purpose of § 6-1903 is to ensure the length of supervision is consistent with the risk and need of individuals and fully incorporated into probation supervision practices. The following is intended to provide structure for early discharge where appropriate, for low to moderate risk to reoffend individuals, thereby maximizing probation resources.

(A) Pursuant to Neb. Rev. Stat. § 29-2263(1) and (2), the probation officer may submit an application for early discharge at any time. The probation officer shall submit an application for early discharge if the following have been met:

(1) Three-quarters of the imposed sentence is served;

(2) No major violations during the preceding 6 months;

(3) The individual is in compliance with all other conditions, including, but not limited to, being current on fees owed and having paid all restitution and fines in full; and

(4) The assessed risk level indicates the individual is at a reduced risk of recidivism.

(B) Pursuant to Neb. Rev. Stat. § 29-2263(1) and (2), the court may consider early discharge at any time. The court shall consider early discharge of eligible probationers, upon application, who have served at least three-quarters of the period of probation and after review of a discharge summary received from the probation office. The discharge summary shall provide information regarding performance while under

supervision, demonstrated behavioral change, and reduction in risk including, but not limited to; no major violations during the preceding 6 months and compliance with all conditions, including fees, restitution, and fines.

(C) Upon approval by the court, the order shall be filed with the Court Clerk and notice given to the probationer and counsel of record. Victims shall be notified if required by law. Upon denial by the court, the court shall communicate to the probation officer who shall notify the probationer.

§ 6-1904. Post-release supervision.

The purpose of § 6-1904 is to ensure that as a part of a determinate sentence, a post-release supervision plan is created to offer a smooth, meaningful, and comprehensive transition of probationers from a term of incarceration to community supervision.

(A) In cases requiring a determinate sentence pursuant to Neb. Rev. Stat. § 29-2260(5), the court shall, at the time a sentence is pronounced, impose a term of incarceration and a term of post-release supervision pursuant to Neb. Rev. Stat. § 29-2204.02(1), and shall enter a post-release supervision order that includes conditions pursuant to Neb. Rev. Stat. § 29-2262. The court shall specify, on the record, that conditions of the order of post-release supervision may be modified or eliminated pursuant to Neb. Rev. Stat. § 29-2263(3).

(B) The court shall receive a post-release supervision plan no later than 45 days prior to the individual's anticipated date of release from the Department of Correctional Services for judicial approval or denial. The court shall consider modification to the post-release supervision order, upon application and recommendation, based upon the post-release supervision plan from the probation office. The plan shall be collaboratively prepared by the Office of Probation Administration and the Department of Correctional Services to provide information regarding performance and programming while incarcerated, an updated risk/needs assessment, along with a community needs and service assessment.

(C) The court shall receive a post-release supervision plan no later than 30 days prior to the individual's anticipated date of release from the local county jail for judicial approval or denial. The court shall consider modification to the post-release supervision order, upon application and recommendation, based upon the post-release supervision plan from the probation office. When an individual has been incarcerated in a local county jail, the post-release supervision plan shall be defined as the presentence investigation, or a subsequent risk and needs assessment, and other available information.

(D) No later than 30 days prior to the individual's anticipated date of release from the Department of Correctional Services, the court shall approve, deny, or modify the post-release supervision plan and, if applicable, modify the post-release supervision order. No later than 15 days prior to the individual's anticipated date of release from local county jail, the court shall approve, deny, or modify the post-release supervision plan and, if applicable, modify the post-release supervision order.

(E) Upon approval, denial, or modification, the court shall, within 3 judicial days, forward the determination, per local court and probation office procedure.

§ 6-1905. Interstate Compact and JUSTICE.

The purpose of § 6-1905 is to provide the courts with a procedure to ensure that fees, filings, custodial sanctions, and appointment of counsel on transferred Interstate Compact cases pursuant to the Interstate

Compact for Adult Offender Supervision are recorded in JUSTICE, thus promoting uniform, statewide recordkeeping. See Neb. Rev. Stat. §§ 29-2639 and 29-2640.

(A) Upon receipt of the signed Nebraska Interstate Compact Offender Agreement, the Nebraska Compact Office shall forward, within 5 judicial days, the following to the District or County Court Clerk in the county in which the probationer will be supervised:

(1) The probation terms and conditions from the sending state.

(2) The Nebraska Interstate Compact Agreement signed by both the probationer and the supervising probation officer.

(B) Upon receipt of the signed Nebraska Interstate Compact Offender Agreement, and within 5 judicial days, the Court Clerk in the receiving county shall enter the transferred case details into JUSTICE and assign the case a distinguishing case number denoting the case is an Interstate Compact transfer case.